



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Imaging Systems Technology

File: B-278112

Date: December 10, 1997

Carol Ann Wedding for the protester.

J. Randolph MacPherson, Esq., Sullivan & Worcester LLP, for The GM Cope-LAU Joint Venture, an intervenor.

Linda Oliver, Esq., Department of the Navy, for the agency.

Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that proposal was improperly downgraded based on results of equipment demonstration is denied where solicitation stated that demonstration was part of initial proposal and required offerors to show compliance with statement of work requirements at the demonstration, and protester failed to demonstrate that its equipment met two of the requirements at the demonstration.

DECISION

Imaging Systems Technology (IST) protests the award of a contract to The GM Cope-LAU Joint Venture under request for proposals (RFP) No. N00019-97-R-0043, issued by the Department of the Navy for 38 Video Mapper Replacement Units, 250 Remote Control Units, system software, 4 Installation Checkout Kits, training, and associated data.

We deny the protest.

The RFP contemplated award of a fixed-price contract under Federal Acquisition Regulation (FAR) part 12, Acquisition of Commercial Items, and contained a statement of work (SOW) which outlined the government's requirements. Award was to be made on a best value basis, considering price and the following technical factors: (1) technical aspects of the item offered to meet the government's requirements, including warranty (most important factor); (2) ability to meet the delivery schedule; and (3) past performance. In addition to a written description of the manufacturer's product specifications, ability to meet the delivery schedule and the data items proposed and how they meet the government's requirements, offerors were required to conduct a technical demonstration of their system, during which compliance with all requirements had to be demonstrated.

Three offers were received (only IST's and GM Cope's are relevant here). Following the demonstrations, the agency rated IST's proposal as follows: unsatisfactory/high risk (technical), marginal/medium risk (delivery), and satisfactory/low risk (past performance). IST's unsatisfactory/high risk rating for the technical factor was based largely on IST's failure to show compliance with all technical requirements during the demonstration. Specifically, the remote control unit (RCU) demonstrated was found to be too small, and one map failure caused five maps to fail. In contrast, GM Cope's proposal was rated highly satisfactory/low risk under all factors. The agency concluded that GM Cope's proposal's technical superiority and offered 2-year hardware/software warranty (compared to IST's 2-year hardware and 1-year software warranty) offset IST's significant cost advantage and made award to GM Cope without discussions.

IST argues that its proposed equipment in fact meets all technical requirements, and that it thus should have received the award based on its low price. As for its failure to verify compliance during the demonstration, IST asserts that (1) it demonstrated an RCU smaller than required because no dimensions for the RCU were included in the RFP--its RCU in fact can be delivered in any configuration; and (2) there was not a map failure at its demonstration, since the failure was caused by operator error--due to the agency's failure to provide a necessary radar frequency--not a system failure.

This argument is without merit. As indicated above, the RFP required each offeror to provide, as "part of the offeror's initial proposal," a technical demonstration which "shall demonstrate that the offeror's products meet all technical considerations detailed in the [SOW]." The SOW stated that "[t]he [RCU] shall be form/fit and shall use the existing locations of the FA-8970 remote map selector switches," and that "[a]ny map failure shall not cause more than one map channel to fail." As indicated above, IST's RCU was found noncompliant with the form/fit requirement based on improper (too small) dimensions, and during the demonstration one map failure caused five maps to fail. IST's assertion, essentially, that the demonstration did not show that its equipment fails to satisfy the SOW requirements ignores the plain language of the RFP--offerors were to affirmatively demonstrate compliance with the requirements at the demonstration. Thus, while IST claims that it can, in fact, furnish a compliant RCU, and that there was no map failure--that any "failure" was due to operator error--the fact remains that IST was unable to demonstrate compliance with these two SOW requirements at the demonstration. This being the case, it was reasonable for the agency to downgrade the firm's proposal under the most important evaluation factor.

To the extent IST attributes its failure in this regard to the agency's improper failure to provide necessary information (*i.e.*, RCU dimensions and a required radar frequency), the protest is untimely, since it was clear from the RFP that the allegedly necessary information had been omitted; protests of such alleged

solicitation defects must be filed prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1997).¹ IST also argues that the RFP requirements were specifically written based upon GM Cope's equipment, and that the RFP failed to advise offerors of the weight of the technical demonstration in the evaluation. These arguments also concern alleged solicitation defects, and therefore also are untimely because they were not raised prior to the closing date. In any event, absent an allegation that the features required by a solicitation exceed the agency's needs, not asserted here, the mere assertion that a specification is "written around" design features of a particular product is not a valid basis for protest. Nidek, Inc., B-272255, Sept. 11, 1996, 96-2 CPD ¶ 112 at 4. Further, while the solicitation did not specify a proportional weight for the demonstration, it devoted one-half page to discussion of the demonstration, clearly stating both that it would be deemed part of the proposal and (twice) that all SOW requirements were to be addressed. We think this was sufficient to indicate the importance of the demonstration in the evaluation; it was clear that the agency intended to evaluate not just offerors' asserted compliance with the solicitation requirements, but also their ability to physically demonstrate actual compliance.

IST protests that its evaluation improperly was based only on the 1-hour demonstration, apparently without regard for its written proposal, and complains that it has not been furnished any written information regarding the evaluation of its proposal. IST has not been furnished the evaluation documents because the agency has designated them source selection sensitive; as such, the documents are only available to a protester's legal counsel, through our protective order process. See 4 C.F.R. § 21.4. Since IST is pursuing its protest pro se, without counsel, it is not entitled to review the evaluation documents. However, our in camera review indicates that the agency did in fact evaluate IST's written proposal, and the fact that the perceived deficiencies occurred only during the demonstration, and that the demonstration results therefore ultimately led to the significant downgrading of the proposal, in no way suggests otherwise. Again, since the RFP provided for evaluation of the demonstration as part of the proposal, it was proper to downgrade IST's proposal based on the demonstration, notwithstanding that the written proposal did not reflect the deficiencies; indeed, the demonstration presumably was intended as a means of detecting deficiencies that would not be apparent from a narrative proposal.

¹In an October 14 submission, IST challenges the rejection of its RCU on a new basis--that an amendment to the RFP essentially negated the form/fit requirement. However, allegations such as this must be raised no later than 10 days after the protest basis was known. 4 C.F.R. § 21.2(a)(2). IST was aware of this protest ground at the time of its September 17 debriefing, when it was informed that it had failed to meet the form/fit requirement. The argument therefore is untimely and will not be considered.

IST maintains that GM Cope "has aggressively and unfairly used prior bid protests . . . to discourage federal agencies from keeping contracts with [IST] so as to obtain an unfair competitive advantage over US suppliers of [video mapping] products." This is not a valid basis of protest; there is nothing improper in a firm's using the bid protest process to challenge contract awards.

IST maintains that GM Cope is ineligible for award because it is an "American shell for a Danish corporation which has been sanctioned against doing business in the United States." However, IST has not identified the alleged sanctioning body or provided any other supporting details regarding this allegation, and the agency reports that GM Cope was not included on the list of suspended/debarred firms at the time of award (and is not now). Thus, this is not a valid protest basis.²

IST asserts that GM Cope demonstrated its equipment for the agency prior to the issuing of the solicitation, and thereby learned the Navy radar system frequencies, which enabled it to pre-set its video mapping frequencies prior to the official demonstration, and hence gain competitive advantage. Any competitive advantage gained by GM Cope was unobjectionable. The Navy explains that all video mapping vendors, including GM Cope and IST, were invited to demonstrate their equipment during a market survey preceding the procurement, and that GM Cope participated, while IST did not. While material information may have been imparted to participating firms (GM Cope actually denies it received the radar frequency, explaining that it was not required for its system demonstration), this was foreseeable at the time of the invitation. While IST was free to decline the invitation, there was nothing improper in this market survey approach, and no basis to object to the other firms' obtaining useful information during their demonstrations. (Again, if IST believed it should be provided the necessary frequency, it should have so protested prior to the closing date.)

The protest is denied.

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²In its October 14 submission, IST expands on its argument concerning GM Cope's relationship with a foreign corporation and the alleged sanctions. This detailed argument is untimely. Our Regulations do not contemplate the unwarranted piecemeal development of protest issues, Innovative Refrigeration Concepts, B-272370, Sept. 30, 1996, 96-2 CPD ¶ 127 at 5, and presenting a broadly stated general allegation in an initial protest does not permit the protester later to present specific, and otherwise untimely, arguments having some relevance to the initial general allegation. GE Gov't Servs., B-235101, Aug. 11, 1989, 89-2 CPD ¶ 128 at 4.